

# EXHIBIT A

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SUBSTITUTE HOUSE BILL 2614**

Chapter 185, Laws of 2012

62nd Legislature  
2012 Regular Session

HOMEOWNERS IN CRISIS--ASSISTANCE

EFFECTIVE DATE: 06/07/12 - Except section 12, which becomes  
effective 03/29/12.

Passed by the House March 6, 2012  
Yeas 97 Nays 0

FRANK CHOPP

\_\_\_\_\_  
**Speaker of the House of Representatives**

Passed by the Senate March 5, 2012  
Yeas 47 Nays 1

BRAD OWEN

\_\_\_\_\_  
**President of the Senate**

Approved March 29, 2012, 7:19 p.m.

CHRISTINE GREGOIRE

\_\_\_\_\_  
**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of  
the House of Representatives of  
the State of Washington, do hereby  
certify that the attached is  
**ENGROSSED SUBSTITUTE HOUSE BILL  
2614** as passed by the House of  
Representatives and the Senate on  
the dates hereon set forth.

BARBARA BAKER

\_\_\_\_\_  
**Chief Clerk**

FILED

March 29, 2012

**Secretary of State  
State of Washington**

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ENGROSSED SUBSTITUTE HOUSE BILL 2614

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AS AMENDED BY THE SENATE

Passed Legislature - 2012 Regular Session

State of Washington                      62nd Legislature                      2012 Regular Session

By House Judiciary (originally sponsored by Representatives Kenney, Ryu, Hasegawa, and Santos)

READ FIRST TIME 01/31/12.

1            AN ACT Relating to assisting homeowners in crisis by providing  
2 alternatives, remedies, and assistance; amending RCW 18.86.120,  
3 4.16.040, 61.24.031, 61.24.160, 61.24.163, 61.24.169, 61.24.174,  
4 61.24.030, 61.24.040, 61.24.172, 61.24.010, and 61.24.050; adding a new  
5 section to chapter 64.04 RCW; adding a new section to chapter 61.24  
6 RCW; and declaring an emergency.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8            NEW SECTION.    **Sec. 1.** A new section is added to chapter 64.04 RCW  
9 to read as follows:

10           (1) If the beneficiary or mortgagee, or its assignees, of debt  
11 secured by owner-occupied real property intends to release its deed of  
12 trust or mortgage in the real property for less than full payment of  
13 the secured debt, it shall provide upon its first written notice to the  
14 borrower the following information in substantially the following form:

15           "To:    [Name of borrower]                      DATE:

16           Please take note that [name of beneficiary or mortgagee, or its  
17 assignees], in releasing its security interest in this owner-occupied  
18 real property, [waives or reserves] the right to collect that amount

1 that constitutes full payment of the secured debt. The amount of debt  
2 outstanding as of the date of this letter is \$. . . . . However,  
3 nothing in this letter precludes the borrower from negotiating with the  
4 [name of beneficiary or mortgagee, or its assignees] for a full release  
5 of this outstanding debt.

6 If [name of beneficiary or mortgagee, or its assignees] does not  
7 initiate a court action to collect the outstanding debt within three  
8 years on the date which it released its security interest, the right to  
9 collect the outstanding debt is forfeited."

10 (2) If the beneficiary or mortgagee, or its assignees, of debt  
11 secured by owner-occupied real property intends to pursue collection of  
12 the outstanding debt, it must initiate a court action to collect the  
13 remaining debt within three years from the date on which it released  
14 its deed of trust or mortgage in the owner-occupied real property or  
15 else it forfeits any right to collect the remaining debt.

16 (3) This section applies only to debts incurred by individuals  
17 primarily for personal, family, or household purposes. This section  
18 does not apply to debts for business, commercial, or agricultural  
19 purposes.

20 (4) For the purposes of this section, "owner-occupied real  
21 property" means real property consisting solely of a single-family  
22 residence, a residential condominium unit, or a residential cooperative  
23 unit that is the principal residence of the borrower.

24 **Sec. 2.** RCW 18.86.120 and 1997 c 217 s 7 are each amended to read  
25 as follows:

26 (1) The pamphlet required under RCW 18.86.030(1)(f) shall consist  
27 of the entire text of RCW 18.86.010 through 18.86.030 and 18.86.040  
28 through 18.86.110 with a separate cover page. The pamphlet shall be 8  
29 1/2 by 11 inches in size, the text shall be in print no smaller than  
30 10-point type, the cover page shall be in print no smaller than 12-  
31 point type, and the title of the cover page "The Law of Real Estate  
32 Agency" shall be in print no smaller than 18-point type. The cover  
33 page shall be in the following form:

34  
**The Law of Real Estate Agency**

1 This pamphlet describes your legal rights in dealing  
2 with a real estate broker or salesperson. Please read it  
3 carefully before signing any documents.

4 The following is only a brief summary of the attached law:

5 Sec. 1. Definitions. Defines the specific terms used in the  
6 law.

7 Sec. 2. Relationships between Licensees and the Public. States  
8 that a licensee who works with a buyer or tenant represents  
9 that buyer or tenant--unless the licensee is the listing agent,  
10 a seller's subagent, a dual agent, the seller personally or the  
11 parties agree otherwise. Also states that in a transaction  
12 involving two different licensees affiliated with the same  
13 broker, the broker is a dual agent and each licensee solely  
14 represents his or her client--unless the parties agree in  
15 writing that both licensees are dual agents.

16 Sec. 3. Duties of a Licensee Generally. Prescribes the duties  
17 that are owed by all licensees, regardless of who the licensee  
18 represents. Requires disclosure of the licensee's agency  
19 relationship in a specific transaction.

20 Sec. 4. Duties of a Seller's Agent. Prescribes the additional  
21 duties of a licensee representing the seller or landlord only.

22 Sec. 5. Duties of a Buyer's Agent. Prescribes the additional  
23 duties of a licensee representing the buyer or tenant only.

24 Sec. 6. Duties of a Dual Agent. Prescribes the additional  
25 duties of a licensee representing both parties in the same  
26 transaction, and requires the written consent of both parties  
27 to the licensee acting as a dual agent.

28 Sec. 7. Duration of Agency Relationship. Describes when an  
29 agency relationship begins and ends. Provides that the duties  
30 of accounting and confidentiality continue after the  
31 termination of an agency relationship.

32 Sec. 8. Compensation. Allows brokers to share compensation  
33 with cooperating brokers. States that payment of compensation  
34 does not necessarily establish an agency relationship. Allows

1 brokers to receive compensation from more than one party in a  
2 transaction with the parties' consent.

3 Sec. 9. Vicarious Liability. Eliminates the common law  
4 liability of a party for the conduct of the party's agent or  
5 subagent, unless the agent or subagent is insolvent. Also limits the liability of a  
6 associated with a different broker.

7 Sec. 10. Imputed Knowledge and Notice. Eliminates the common  
8 law rule that notice to or knowledge of an agent constitutes  
9 notice to or knowledge of the principal.

10 Sec. 11. Interpretation. This law replaces the fiduciary  
11 duties owed by an agent to a principal under the common law, to  
12 the extent that it conflicts with the common law.

13 (2)(a) The pamphlet required under RCW 18.86.030(1)(f) must also  
14 include the following disclosure: When the seller of owner-occupied  
15 residential real property enters into a listing agreement with a real  
16 estate licensee where the proceeds from the sale may be insufficient to  
17 cover the costs at closing, it is the responsibility of the real estate  
18 licensee to disclose to the seller in writing that the decision by any  
19 beneficiary or mortgagee, or its assignees, to release its interest in  
20 the real property, for less than the amount the borrower owes, does not  
21 automatically relieve the seller of the obligation to pay any debt or  
22 costs remaining at closing, including fees such as the real estate  
23 licensee's commission.

24 (b) For the purposes of this subsection, "owner-occupied real  
25 property" means real property consisting solely of a single-family  
26 residence, a residential condominium unit, or a residential cooperative  
27 unit that is the principal residence of the borrower.

28 **Sec. 3.** RCW 4.16.040 and 2007 c 124 s 1 are each amended to read  
29 as follows:

30 The following actions shall be commenced within six years:

31 (1) An action upon a contract in writing, or liability express or  
32 implied arising out of a written agreement, except as provided for in  
33 section 1(2) of this act.

34 (2) An action upon an account receivable. For purposes of this  
35 section, an account receivable is any obligation for payment incurred  
36 in the ordinary course of the claimant's business or profession,

1 whether arising from one or more transactions and whether or not earned  
2 by performance.

3 (3) An action for the rents and profits or for the use and  
4 occupation of real estate.

5 **Sec. 4.** RCW 61.24.031 and 2011 c 58 s 5 are each amended to read  
6 as follows:

7 (1)(a) A trustee, beneficiary, or authorized agent may not issue a  
8 notice of default under RCW 61.24.030(8) until: (i) Thirty days after  
9 ~~((initial contact with the borrower was initiated as required under (b)~~  
10 ~~of this subsection or thirty days after))~~ satisfying the due diligence  
11 requirements as described in subsection (5) of this section and the  
12 borrower has not responded; or (ii) if the borrower responds to the  
13 initial contact, ninety days after the initial contact with the  
14 borrower was initiated.

15 (b) A beneficiary or authorized agent shall make initial contact  
16 with the borrower by letter to provide the borrower with information  
17 required under (c) of this subsection and by telephone as required  
18 under subsection (5) of this section. The letter required under this  
19 subsection must be mailed in accordance with subsection (5)(a) of this  
20 section and must include the information described in (c) of this  
21 subsection and subsection (5)(e)(i) through (iv) of this section.

22 (c) The letter required under this subsection, developed by the  
23 department pursuant to RCW 61.24.033, at a minimum shall include:

24 (i) A paragraph printed in no less than twelve-point font and  
25 bolded that reads:

26 "You must respond within thirty days of the date of this letter.  
27 IF YOU DO NOT RESPOND within thirty days, a notice of default may be  
28 issued and you may lose your home in foreclosure.

29 IF YOU DO RESPOND within thirty days of the date of this letter,  
30 you will have an additional sixty days to meet with your lender before  
31 a notice of default may be issued.

32 You should contact a housing counselor or attorney as soon as  
33 possible. Failure to contact a housing counselor or attorney may  
34 result in your losing certain opportunities, such as meeting with your  
35 lender or participating in mediation in front of a neutral third party.  
36 A housing counselor or attorney can help you work with your lender to  
37 avoid foreclosure.

1       If you filed bankruptcy or have been discharged in bankruptcy, this  
2       communication is not intended as an attempt to collect a debt from you  
3       personally, but is notice of enforcement of the deed of trust lien  
4       against the property. If you wish to avoid foreclosure and keep your  
5       property, this notice sets forth your rights and options."

6       (ii) The toll-free telephone number from the United States  
7       department of housing and urban development to find a department-  
8       approved housing counseling agency, the toll-free numbers for the  
9       statewide foreclosure hotline recommended by the housing finance  
10      commission, and the statewide civil legal aid hotline for assistance  
11      and referrals to other housing counselors and attorneys;

12      (iii) A paragraph stating that a housing counselor may be available  
13      at little or no cost to the borrower and that whether or not the  
14      borrower contacts a housing counselor or attorney, the borrower has the  
15      right to request a meeting with the beneficiary; and

16      (iv) A paragraph explaining how the borrower may respond to the  
17      letter and stating that after responding the borrower will have an  
18      opportunity to meet with his or her beneficiary in an attempt to  
19      resolve and try to work out an alternative to the foreclosure and that,  
20      after ninety days from the date of the letter, a notice of default may  
21      be issued, which starts the foreclosure process.

22      (d) If the beneficiary has exercised due diligence as required  
23      under subsection (5) of this section and the borrower does not respond  
24      by contacting the beneficiary within thirty days of the initial  
25      contact, the notice of default may be issued. "Initial contact" with  
26      the borrower is considered made three days after the date the letter  
27      required in (b) of this subsection is sent.

28      (e) If a meeting is requested by the borrower or the borrower's  
29      housing counselor or attorney, the beneficiary or authorized agent  
30      shall schedule the meeting to occur before the notice of default is  
31      issued. An assessment of the borrower's financial ability to modify or  
32      restructure the loan obligation and a discussion of options must occur  
33      during the meeting scheduled for that purpose.

34      (f) The meeting scheduled to assess the borrower's financial  
35      ability to modify or restructure the loan obligation and discuss  
36      options to avoid foreclosure (~~must be in person, unless the~~  
37      ~~requirement to meet in person is waived in writing by the borrower or~~  
38      ~~the borrower's representative. A person who is authorized to modify~~



~~the loan obligation or reach an alternative resolution to foreclosure on behalf of the beneficiary may participate by telephone or video conference, so long as a representative of the beneficiary is at the meeting in person))~~ may be held telephonically, unless the borrower or borrower's representative requests in writing that a meeting be held in person. The written request for an in-person meeting must be made within thirty days of the initial contact with the borrower. If the meeting is requested to be held in person, the meeting must be held in the county where the borrower resides. A person who is authorized to agree to a resolution, including modifying or restructuring the loan obligation or other alternative resolution to foreclosure on behalf of the beneficiary, must be present either in person or on the telephone or video conference during the meeting.

(2) A notice of default issued under RCW 61.24.030(8) must include a declaration, as provided in subsection (9) of this section, from the beneficiary or authorized agent that it has contacted the borrower as provided in subsection (1) of this section, it has tried with due diligence to contact the borrower under subsection (5) of this section, or the borrower has surrendered the property to the trustee, beneficiary, or authorized agent. Unless the trustee has violated his or her duty under RCW 61.24.010(4), the trustee is entitled to rely on the declaration as evidence that the requirements of this section have been satisfied, and the trustee is not liable for the beneficiary's or its authorized agent's failure to comply with the requirements of this section.

(3) If, after the initial contact under subsection (1) of this section, a borrower has designated a housing counseling agency, housing counselor, or attorney to discuss with the beneficiary or authorized agent, on the borrower's behalf, options for the borrower to avoid foreclosure, the borrower shall inform the beneficiary or authorized agent and provide the contact information to the beneficiary or authorized agent. The beneficiary or authorized agent shall contact the designated representative for the borrower to meet.

(4) The beneficiary or authorized agent and the borrower or the borrower's representative shall attempt to reach a resolution for the borrower within the ninety days from the time the initial contact is sent and the notice of default is issued. A resolution may include, but is not limited to, a loan modification, an agreement to conduct a

1 short sale, or a deed in lieu of foreclosure transaction, or some other  
2 workout plan. Any modification or workout plan offered at the meeting  
3 with the borrower's designated representative by the beneficiary or  
4 authorized agent is subject to approval by the borrower.

5 (5) A notice of default may be issued under RCW 61.24.030(8) if a  
6 beneficiary or authorized agent has initiated contact with the borrower  
7 as required under subsection (1)(b) of this section and the failure to  
8 meet with the borrower occurred despite the due diligence of the  
9 beneficiary or authorized agent. Due diligence requires the following:

10 (a) A beneficiary or authorized agent shall first attempt to  
11 contact a borrower by sending a first-class letter to the address in  
12 the beneficiary's records for sending account statements to the  
13 borrower and to the address of the property encumbered by the deed of  
14 trust. The letter must be the letter described in subsection (1)(c) of  
15 this section.

16 (b)(i) After the letter has been sent, the beneficiary or  
17 authorized agent shall attempt to contact the borrower by telephone at  
18 least three times at different hours and on different days. Telephone  
19 calls must be made to the primary and secondary telephone numbers on  
20 file with the beneficiary or authorized agent.

21 (ii) A beneficiary or authorized agent may attempt to contact a  
22 borrower using an automated system to dial borrowers if the telephone  
23 call, when answered, is connected to a live representative of the  
24 beneficiary or authorized agent.

25 (iii) A beneficiary or authorized agent satisfies the telephone  
26 contact requirements of this subsection (5)(b) if the beneficiary or  
27 authorized agent determines, after attempting contact under this  
28 subsection (5)(b), that the borrower's primary telephone number and  
29 secondary telephone number or numbers on file, if any, have been  
30 disconnected or are not good contact numbers for the borrower.

31 (iv) The telephonic contact under this subsection (5)(b) does not  
32 constitute the meeting under subsection (1)(f) of this section.

33 (c) If the borrower does not respond within fourteen days after the  
34 telephone call requirements of (b) of this subsection have been  
35 satisfied, the beneficiary or authorized agent shall send a certified  
36 letter, with return receipt requested, to the borrower at the address  
37 in the beneficiary's records for sending account statements to the  
38 borrower and to the address of the property encumbered by the deed of

1 trust. The letter must include the information described in (e)(i)  
2 through (iv) of this subsection. The letter must also include a  
3 paragraph stating: "Your failure to contact a housing counselor or  
4 attorney may result in your losing certain opportunities, such as  
5 meeting with your lender or participating in mediation in front of a  
6 neutral third party."

7 (d) The beneficiary or authorized agent shall provide a means for  
8 the borrower to contact the beneficiary or authorized agent in a timely  
9 manner, including a toll-free telephone number or charge-free  
10 equivalent that will provide access to a live representative during  
11 business hours for the purpose of initiating and scheduling the meeting  
12 under subsection (1)(f) of this section.

13 (e) The beneficiary or authorized agent shall post a link on the  
14 home page of the beneficiary's or authorized agent's internet web site,  
15 if any, to the following information:

16 (i) Options that may be available to borrowers who are unable to  
17 afford their mortgage payments and who wish to avoid foreclosure, and  
18 instructions to borrowers advising them on steps to take to explore  
19 those options;

20 (ii) A list of financial documents borrowers should collect and be  
21 prepared to present to the beneficiary or authorized agent when  
22 discussing options for avoiding foreclosure;

23 (iii) A toll-free telephone number or charge-free equivalent for  
24 borrowers who wish to discuss options for avoiding foreclosure with  
25 their beneficiary or authorized agent; and

26 (iv) The toll-free telephone number or charge-free equivalent made  
27 available by the department to find a department-approved housing  
28 counseling agency.

29 (6) Subsections (1) and (5) of this section do not apply if (~~any~~  
30 ~~of the following occurs:~~

31 ~~(a)) the borrower has surrendered the property as evidenced by~~  
32 ~~either a letter confirming the surrender or delivery of the keys to the~~  
33 ~~property to the trustee, beneficiary, or authorized agent(;~~~~or~~

34 ~~(b) The borrower has filed for bankruptcy, and the bankruptcy stay~~  
35 ~~remains in place, or the borrower has filed for bankruptcy and the~~  
36 ~~bankruptcy court has granted relief from the bankruptcy stay allowing~~  
37 ~~enforcement of the deed of trust)).~~

1 (7)(a) This section applies only to deeds of trust that are  
2 recorded against owner-occupied residential real property. This  
3 section does not apply to deeds of trust: (i) Securing a commercial  
4 loan; (ii) securing obligations of a grantor who is not the borrower or  
5 a guarantor; or (iii) securing a purchaser's obligations under a  
6 seller-financed sale.

7 (b) This section does not apply to association beneficiaries  
8 subject to chapter 64.32, 64.34, or 64.38 RCW.

9 (8) As used in this section:

10 (a) "Department" means the United States department of housing and  
11 urban development.

12 (b) "Seller-financed sale" means a residential real property  
13 transaction where the seller finances all or part of the purchase  
14 price, and that financed amount is secured by a deed of trust against  
15 the subject residential real property.

16 (9) The form of declaration to be provided by the beneficiary or  
17 authorized agent as required under subsection (2) of this section must  
18 be in substantially the following form:

19 **"FORECLOSURE LOSS MITIGATION FORM**

20 **Please select applicable option(s) below.**

21 The undersigned beneficiary or authorized agent for the beneficiary  
22 hereby represents and declares under the penalty of perjury that [check  
23 the applicable box and fill in any blanks so that the trustee can  
24 insert, on the beneficiary's behalf, the applicable declaration in the  
25 notice of default required under chapter 61.24 RCW]:

26 (1) [ ] The beneficiary or beneficiary's authorized agent has  
27 contacted the borrower under, and has complied with, RCW 61.24.031  
28 (contact provision to "assess the borrower's financial ability to pay  
29 the debt secured by the deed of trust and explore options for the  
30 borrower to avoid foreclosure") and the borrower did not request a  
31 meeting.

32 (2) [ ] The beneficiary or beneficiary's authorized agent has  
33 contacted the borrower as required under RCW 61.24.031 and the borrower  
34 or the borrower's designated representative requested a meeting. A  
35 meeting was held in compliance with RCW 61.24.031.

36 (3) [ ] The beneficiary or beneficiary's authorized agent has

1 exercised due diligence to contact the borrower as required in RCW  
2 61.24.031(5).

3 (4) [ ] The borrower has surrendered the secured property as  
4 evidenced by either a letter confirming the surrender or by delivery of  
5 the keys to the secured property to the beneficiary, the beneficiary's  
6 authorized agent or to the trustee.

7 ~~((5) [ ] Under RCW 61.24.031, the beneficiary or the beneficiary's~~  
8 ~~authorized agent has verified information that, on or before the date~~  
9 ~~of this declaration, the borrower(s) has filed for bankruptcy, and the~~  
10 ~~bankruptcy stay remains in place, or the borrower has filed for~~  
11 ~~bankruptcy and the bankruptcy court has granted relief from the~~  
12 ~~bankruptcy stay allowing the enforcement of the deed of trust.))"~~

13 **Sec. 5.** RCW 61.24.160 and 2011 c 58 s 6 are each amended to read  
14 as follows:

15 (1)(a) A housing counselor who is contacted by a borrower under RCW  
16 61.24.031 has a duty to act in good faith to attempt to reach a  
17 resolution with the beneficiary on behalf of the borrower within the  
18 ninety days provided from the date the beneficiary initiates contact  
19 with the borrower and the date the notice of default is issued. A  
20 resolution may include, but is not limited to, modification of the  
21 loan, an agreement to conduct a short sale, a deed in lieu of  
22 foreclosure transaction, or some other workout plan.

23 (b) Nothing in RCW 61.24.031 or this section precludes a meeting or  
24 negotiations between the housing counselor, borrower, and beneficiary  
25 at any time, including after the issuance of the notice of default.

26 (c) A borrower who is contacted under RCW 61.24.031 may seek the  
27 assistance of a housing counselor or attorney at any time.

28 (2) Housing counselors have a duty to act in good faith to assist  
29 borrowers by:

30 (a) Preparing the borrower for meetings with the beneficiary;

31 (b) Advising the borrower about what documents the borrower must  
32 have to seek a loan modification or other resolution;

33 (c) Informing the borrower about the alternatives to foreclosure,  
34 including loan modifications or other possible resolutions; and

35 (d) Providing other guidance, advice, and education as the housing  
36 counselor considers necessary.

1 (3) A housing counselor or attorney assisting a borrower may refer  
2 the borrower to ((a)) mediation ((program)), pursuant to RCW 61.24.163,  
3 if((÷

4 (a)) the housing counselor or attorney determines that mediation  
5 is appropriate based on the individual circumstances((÷and

6 ~~(b) A notice of sale on the deed of trust has not been recorded.~~

7 (4)) and the borrower has received a notice of default. The  
8 referral to mediation may be made any time after a notice of default  
9 has been issued but no later than twenty days after the date a notice  
10 of sale has been recorded.

11 (4) For borrowers who have received a letter under RCW 61.24.031  
12 before the effective date of this section, a referral to mediation by  
13 a housing counselor or attorney does not preclude a trustee issuing a  
14 notice of default if the requirements of RCW 61.24.031 have been met.

15 (5) Housing counselors providing assistance to borrowers under RCW  
16 61.24.031 are not liable for civil damages resulting from any acts or  
17 omissions in providing assistance, unless the acts or omissions  
18 constitute gross negligence or willful or wanton misconduct.

19 (6) Housing counselors shall provide information to the department  
20 to assist the department in its annual report to the legislature as  
21 required under RCW 61.24.163((÷15)) (18). The information provided to  
22 the department by the housing counselors should include outcomes of  
23 foreclosures and be similar to the information requested in the  
24 national foreclosure mortgage counseling client level foreclosure  
25 outcomes report form.

26 **Sec. 6.** RCW 61.24.163 and 2011 2nd sp.s. c 4 s 1 are each amended  
27 to read as follows:

28 (1) The foreclosure mediation program established in this section  
29 applies only to borrowers who have been referred to mediation by a  
30 housing counselor or attorney. The referral to mediation may be made  
31 any time after a notice of default has been issued but no later than  
32 twenty days after the date a notice of sale has been recorded. The  
33 mediation program under this section is not governed by chapter 7.07  
34 RCW and does not preclude mediation required by a court or other  
35 provision of law.

36 (2) A housing counselor or attorney referring a borrower to

1 mediation shall send a notice to the borrower and the department,  
2 stating that mediation is appropriate.

3 (3) Within ten days of receiving the notice, the department shall:

4 (a) Send a notice to the beneficiary, the borrower, the housing  
5 counselor or attorney who referred the borrower, and the trustee  
6 stating that the parties have been referred to mediation. The notice  
7 must include the statements and list of documents and information  
8 described in subsections (4) and (5) ~~((b)(i) through (iv))~~ of this  
9 section and a statement explaining each party's responsibility to pay  
10 the mediator's fee; and

11 (b) Select a mediator and notify the parties of the selection.

12 (4) Within ~~((forty-five))~~ twenty-three days of the department's  
13 notice that the parties have been referred to mediation, the borrower  
14 shall transmit the documents required for mediation to the mediator and  
15 the beneficiary. The required documents include an initial Making Home  
16 Affordable Application (HAMP) package or such other equivalent  
17 homeowner financial information worksheet as required by the  
18 department. In the event the department is required to create a  
19 worksheet, the worksheet must include, at a minimum, the following  
20 information:

21 (a) The borrower's current and future income;

22 (b) Debts and obligations;

23 (c) Assets;

24 (d) Expenses;

25 (e) Tax returns for the previous two years;

26 (f) Hardship information;

27 (g) Other applicable information commonly required by any  
28 applicable federal mortgage relief program.

29 (5) Within twenty days of the beneficiary's receipt of the  
30 borrower's documents, the beneficiary shall transmit the documents  
31 required for mediation to the mediator and the borrower. The required  
32 documents include:

33 (a) An accurate statement containing the balance of the loan within  
34 thirty days of the date on which the beneficiary's documents are due to  
35 the parties;

36 (b) Copies of the note and deed of trust;

37 (c) Proof that the entity claiming to be the beneficiary is the

1 owner of any promissory note or obligation secured by the deed of  
2 trust. Sufficient proof may be a copy of the declaration described in  
3 RCW 61.24.030(7)(a);

4 (d) The best estimate of any arrearage and an itemized statement of  
5 the arrearages;

6 (e) An itemized list of the best estimate of fees and charges  
7 outstanding;

8 (f) The payment history and schedule for the preceding twelve  
9 months, or since default, whichever is longer, including a breakdown of  
10 all fees and charges claimed;

11 (g) All borrower-related and mortgage-related input data used in  
12 any net present values analysis. If no net present values analysis is  
13 required by the applicable federal mortgage relief program, then the  
14 input data required under the federal deposit insurance corporation and  
15 published in the federal deposit insurance corporation loan  
16 modification program guide, or if that calculation becomes unavailable,  
17 substantially similar input data as determined by the department;

18 (h) An explanation regarding any denial for a loan modification,  
19 forbearance, or other alternative to foreclosure in sufficient detail  
20 for a reasonable person to understand why the decision was made;

21 (i) Appraisal or other broker price opinion most recently relied  
22 upon by the beneficiary not more than ninety days old at the time of  
23 the scheduled mediation; and

24 (j) The portion or excerpt of the pooling and servicing agreement  
25 that prohibits the beneficiary from implementing a modification, if the  
26 beneficiary claims it cannot implement a modification due solely to  
27 limitations in a pooling and servicing agreement, and documentation or  
28 a statement detailing the efforts of the beneficiary to obtain a waiver  
29 of the pooling and servicing agreement provisions.

30 (6) Within seventy days of receiving the referral from the  
31 department, the mediator shall convene a mediation session in the  
32 county where the borrower resides, unless the parties agree on another  
33 location. The parties may agree ((in writing)) to extend the time in  
34 which to schedule the mediation session. If the parties agree to  
35 extend the time, the beneficiary shall notify the trustee of the  
36 extension and the date the mediator is expected to issue the mediator's  
37 certification.



1 ((+5+)) (7)(a) The mediator may schedule phone conferences,  
2 consultations with the parties individually, and other communications  
3 to ensure that the parties have all the necessary information and  
4 documents to engage in a productive mediation.

5 (b) The mediator must send written notice of the time, date, and  
6 location of the mediation session to the borrower, the beneficiary, and  
7 the department at least ((fifteen)) thirty days prior to the mediation  
8 session. At a minimum, the notice must contain:

9 (i) A statement that the borrower may be represented in the  
10 mediation session by an attorney or other advocate;

11 (ii) A statement that a person with authority to agree to a  
12 resolution, including a proposed settlement, loan modification, or  
13 dismissal or continuation of the foreclosure proceeding, must be  
14 present either in person or on the telephone or video conference during  
15 the mediation session; and

16 ((iii)) (~~A complete list of documents and information required by~~  
17 ~~this section that the parties must provide to the mediator and the~~  
18 ~~deadlines for providing the documents and information; and~~

19 ((iv+)) A statement that the parties have a duty to mediate in good  
20 faith and that failure to mediate in good faith may impair the  
21 beneficiary's ability to foreclose on the property or the borrower's  
22 ability to modify the loan or take advantage of other alternatives to  
23 foreclosure.

24 ((+6+)) (8)(a) The borrower, the beneficiary or authorized agent,  
25 and the mediator must meet in person for the mediation session.  
26 However, a person with authority to agree to a resolution on behalf of  
27 the beneficiary may be present over the telephone or video conference  
28 during the mediation session.

29 ((+7+)) (b) After the mediation session commences, the mediator may  
30 continue the mediation session once, and any further continuances must  
31 be with the consent of the parties.

32 (9) The participants in mediation must address the issues of  
33 foreclosure that may enable the borrower and the beneficiary to reach  
34 a resolution, including but not limited to reinstatement, modification  
35 of the loan, restructuring of the debt, or some other workout plan. To  
36 assist the parties in addressing issues of foreclosure, the mediator  
37 ((must)) may require the participants to consider the following:

1 (a) The borrower's current and future economic circumstances,  
2 including the borrower's current and future income, debts, and  
3 obligations for the previous sixty days or greater time period as  
4 determined by the mediator;

5 (b) The net present value of receiving payments pursuant to a  
6 modified mortgage loan as compared to the anticipated net recovery  
7 following foreclosure;

8 (c) Any affordable loan modification calculation and net present  
9 value calculation when required under any federal mortgage relief  
10 program, including the home affordable modification program (HAMP) as  
11 applicable to government-sponsored enterprise and nongovernment-  
12 sponsored enterprise loans and any HAMP-related modification program  
13 applicable to loans insured by the federal housing administration, the  
14 veterans administration, and the rural housing service. If such a  
15 calculation is not provided or required, then the beneficiary must  
16 ~~((use the current calculations, assumptions, and forms that are))~~  
17 provide the net present value data inputs established by the federal  
18 deposit insurance corporation and published in the federal deposit  
19 insurance corporation loan modification program guide or other net  
20 present value data inputs as designated by the department. The  
21 mediator may run the calculation in order for a productive mediation to  
22 occur and to comply with the mediator certification requirement; and

23 (d) Any other loss mitigation guidelines to loans insured by the  
24 federal housing administration, the veterans administration, and the  
25 rural housing service, if applicable.

26 ~~((+8))~~ (10) A violation of the duty to mediate in good faith as  
27 required under this section may include:

28 (a) Failure to timely participate in mediation without good cause;

29 (b) Failure of the borrower or the beneficiary to provide the  
30 ~~((following documentation to the borrower and mediator at least ten~~  
31 ~~days before the mediation or pursuant to the mediator's instructions;~~

32 ~~(i) An accurate statement containing the balance of the loan as of~~  
33 ~~the first day of the month in which the mediation occurs;~~

34 ~~(ii) Copies of the note and deed of trust;~~

35 ~~(iii) Proof that the entity claiming to be the beneficiary is the~~  
36 ~~owner of any promissory note or obligation secured by the deed of~~  
37 ~~trust. Sufficient proof may be a copy of the declaration described in~~  
38 ~~RCW 61.24.030(7)(a);~~

1       ~~(iv) The best estimate of any arrearage and an itemized statement~~  
2 ~~of the arrearages;~~

3       ~~(v) An itemized list of the best estimate of fees and charges~~  
4 ~~outstanding;~~

5       ~~(vi) The payment history and schedule for the preceding twelve~~  
6 ~~months, or since default, whichever is longer, including a breakdown of~~  
7 ~~all fees and charges claimed;~~

8       ~~(vii) All borrower-related and mortgage-related input data used in~~  
9 ~~any net present value analysis;~~

10       ~~(viii) An explanation regarding any denial for a loan modification,~~  
11 ~~forbearance, or other alternative to foreclosure in sufficient detail~~  
12 ~~for a reasonable person to understand why the decision was made;~~

13       ~~(ix) The most recently available appraisal or other broker price~~  
14 ~~opinion most recently relied upon by the beneficiary; and~~

15       ~~(x) The portion or excerpt of the pooling and servicing agreement~~  
16 ~~that prohibits the beneficiary from implementing a modification, if the~~  
17 ~~beneficiary claims it cannot implement a modification due solely to~~  
18 ~~limitations in a pooling and servicing agreement, and documentation or~~  
19 ~~a statement detailing the efforts of the beneficiary to obtain a waiver~~  
20 ~~of the pooling and servicing agreement provisions;~~

21       ~~(c) Failure of the borrower to provide documentation to the~~  
22 ~~beneficiary and mediator, at least ten days before the mediation or~~  
23 ~~pursuant to the mediator's instruction, showing the borrower's current~~  
24 ~~and future income, debts and obligations, and tax returns for the past~~  
25 ~~two years;~~

26       ~~(d) Failure of either party to pay the respective portion of the~~  
27 ~~mediation fee in advance of the mediation as required under this~~  
28 ~~section;~~

29       ~~(e)) documentation required before mediation or pursuant to the~~  
30 ~~mediator's instructions;~~

31       (c) Failure of a party to designate representatives with adequate  
32 authority to fully settle, compromise, or otherwise reach resolution  
33 with the borrower in mediation; and

34       ~~((+f))~~ (d) A request by a beneficiary that the borrower waive  
35 future claims he or she may have in connection with the deed of trust,  
36 as a condition of agreeing to a modification, except for rescission  
37 claims under the federal truth in lending act. Nothing in this section  
38 precludes a beneficiary from requesting that a borrower dismiss with

1 prejudice any pending claims against the beneficiary, its agents, loan  
2 servicer, or trustee, arising from the underlying deed of trust, as a  
3 condition of modification.

4 ~~((+9+))~~ (11) If the mediator reasonably believes a borrower will  
5 not attend a mediation session based on the borrower's conduct, such as  
6 the lack of response to the mediator's communications, the mediator may  
7 cancel a scheduled mediation session and send a written cancellation to  
8 the department and the trustee and send copies to the parties. The  
9 beneficiary may proceed with the foreclosure after receipt of the  
10 mediator's written confirmation of cancellation.

11 (12) Within seven business days after the conclusion of the  
12 mediation session, the mediator must send a written certification to  
13 the department and the trustee and send copies to the parties of:

14 (a) The date, time, and location of the mediation session;

15 (b) The names of all persons attending in person and by telephone  
16 or video conference, at the mediation session;

17 (c) Whether a resolution was reached by the parties, including  
18 whether the default was cured by reinstatement, modification, or  
19 restructuring of the debt, or some other alternative to foreclosure was  
20 agreed upon by the parties;

21 (d) Whether the parties participated in the mediation in good  
22 faith; and

23 (e) If a written agreement was not reached, a description of  
24 ~~((the))~~ any net present value test used, along with a copy of the  
25 inputs, including the result of ~~((the))~~ any net present value test  
26 expressed in a dollar amount.

27 ~~((+10+))~~ (13) If the parties are unable to reach ~~((any agreement~~  
28 ~~and the mediator certifies that the parties acted in good faith, the~~  
29 ~~beneficiary may proceed with the foreclosure.~~

30 ~~(+11+))~~ an agreement, the beneficiary may proceed with the  
31 foreclosure after receipt of the mediator's written certification.

32 (14)(a) The mediator's certification that the beneficiary failed to  
33 act in good faith in mediation constitutes a defense to the nonjudicial  
34 foreclosure action that was the basis for initiating the mediation. In  
35 any action to enjoin the foreclosure, the beneficiary ~~((shall be))~~ is  
36 entitled to rebut the allegation that it failed to act in good faith.

37 (b) The mediator's certification that the beneficiary failed to act  
38 in good faith during mediation does not constitute a defense to a

1 judicial foreclosure or a future nonjudicial foreclosure action if a  
2 modification of the loan is agreed upon and the borrower subsequently  
3 defaults.

4 (c) If an affordable loan modification is not offered in the  
5 mediation or a written agreement was not reached and the mediator's  
6 certification shows that the net present value of the modified loan  
7 exceeds the anticipated net recovery at foreclosure, that showing in  
8 the certification (~~((shall))~~) constitutes a basis for the borrower to  
9 enjoin the foreclosure.

10 (~~((+12+))~~) (15) The mediator's certification that the borrower failed  
11 to act in good faith in mediation authorizes the beneficiary to proceed  
12 with the foreclosure.

13 (~~((+13+))~~) (16)(a) If a borrower has been referred to mediation  
14 before a notice of trustee sale has been recorded, a trustee may not  
15 record the notice of sale until the trustee receives the mediator's  
16 certification stating that the mediation has been completed. (~~((+b+))~~) If  
17 the trustee does not receive the mediator's certification, the trustee  
18 may record the notice of sale after ten days from the date the  
19 certification to the trustee was due. If (~~((the))~~), after a notice of  
20 sale is recorded under this subsection (~~((+13+)(b)+and))~~ (16)(a), the  
21 mediator subsequently issues a certification (~~((alleging))~~) finding that  
22 the beneficiary violated the duty of good faith, (~~((the trustee may not~~  
23 ~~proceed with the sale.~~

24 ~~((+14+))~~) the certification constitutes a basis for the borrower to  
25 enjoin the foreclosure.

26 (b) If a borrower has been referred to mediation after the notice  
27 of sale was recorded, the sale may not occur until the trustee receives  
28 the mediator's certification stating that the mediation has been  
29 completed.

30 (17) A mediator may charge reasonable fees as authorized by this  
31 subsection and by the department. Unless the fee is waived or the  
32 parties agree otherwise, a foreclosure mediator's fee may not exceed  
33 four hundred dollars for preparing, scheduling, and conducting a  
34 mediation session lasting between one hour and three hours. For a  
35 mediation session exceeding three hours, the foreclosure mediator may  
36 charge a reasonable fee, as authorized by the department. The mediator  
37 must provide an estimated fee before the mediation, and payment of the  
38 mediator's fee must be divided equally between the beneficiary and the

1 borrower. The beneficiary and the borrower must tender the loan  
2 mediator's fee (~~((seven))~~) within thirty calendar days (~~((before the~~  
3 ~~commencement of the))~~) from receipt of the department's letter referring  
4 the parties to mediation or pursuant to the mediator's instructions.

5 (~~((15))~~) (18) Beginning December 1, 2012, and every year  
6 thereafter, the department shall report annually to the legislature on:

7 (a) The performance of the program, including the numbers of  
8 borrowers who are referred to mediation by a housing counselor or  
9 attorney;

10 (b) The results of the mediation program, including the number of  
11 mediations requested by housing counselors and attorneys, the number of  
12 certifications of good faith issued, the number of borrowers and  
13 beneficiaries who failed to mediate in good faith, and the reasons for  
14 the failure to mediate in good faith, if known, the numbers of loans  
15 restructured or modified, the change in the borrower's monthly payment  
16 for principal and interest and the number of principal write-downs and  
17 interest rate reductions, and, to the extent practical, the number of  
18 borrowers who report a default within a year of restructuring or  
19 modification;

20 (c) The information received by housing counselors regarding  
21 outcomes of foreclosures; and

22 (d) Any recommendations for changes to the statutes regarding the  
23 mediation program.

24 **Sec. 7.** RCW 61.24.169 and 2011 2nd sp.s. c 4 s 2 are each amended  
25 to read as follows:

26 (1) For the purposes of RCW 61.24.163, the department must maintain  
27 a list of approved foreclosure mediators. The department may approve  
28 the following persons to serve as foreclosure mediators under this  
29 section if the person has completed ten mediations and either a forty-  
30 hour mediation course and sixty hours of mediating or has two hundred  
31 hours experience mediating:

32 (a) Attorneys who are active members of the Washington state bar  
33 association;

34 (b) Employees of United States department of housing and urban  
35 development-approved housing counseling agencies or approved by the  
36 Washington state housing finance commission;

1 (c) Employees or volunteers of dispute resolution centers under  
2 chapter 7.75 RCW; ~~((and))~~

3 (d) Retired judges of Washington courts; and

4 (e) Other experienced mediators.

5 (2) The department may establish a required training program for  
6 foreclosure mediators and may require mediators to acquire training  
7 before being approved. The mediators must be familiar with relevant  
8 aspects of the law, have knowledge of community-based resources and  
9 mortgage assistance programs, and refer borrowers to these programs  
10 where appropriate.

11 (3) The department may remove any mediator from the approved list  
12 of mediators.

13 (4)(a) A mediator under this section ~~((who is an employee or~~  
14 ~~volunteer of a dispute resolution center under chapter 7.75 RCW))~~ is  
15 immune from suit in any civil action based on any proceedings or other  
16 official acts performed in his or her capacity as a foreclosure  
17 mediator, except in cases of willful or wanton misconduct.

18 (b) A mediator is not subject to discovery or compulsory process to  
19 testify in any litigation pertaining to a foreclosure action between  
20 the parties. However, the mediator's certification and all information  
21 and material presented as part of the mediation process may be deemed  
22 admissible evidence, subject to court rules, in any litigation  
23 pertaining to a foreclosure action between the parties.

24 **Sec. 8.** RCW 61.24.174 and 2011 1st sp.s. c 24 s 1 are each amended  
25 to read as follows:

26 (1) Except as provided in subsection ~~((4))~~ (5) of this section,  
27 beginning October 1, 2011, and every quarter thereafter, every  
28 beneficiary issuing notices of default, or directing that a trustee or  
29 authorized agent issue the notice of default, on owner-occupied  
30 residential real property under this chapter must:

31 (a) Report to the department the number of owner-occupied  
32 residential real properties for which the beneficiary has issued a  
33 notice of default during the previous quarter; ~~((and))~~

34 (b) Remit the amount required under subsection (2) of this section;  
35 and

36 (c) Report and update beneficiary contact information for the

1 person and work group responsible for the beneficiary's compliance with  
2 the requirements of the foreclosure fairness act created in this  
3 chapter.

4 (2) For each owner-occupied residential real property for which a  
5 notice of default has been issued, the beneficiary issuing the notice  
6 of default, or directing that a trustee or authorized agent issue the  
7 notice of default, shall remit two hundred fifty dollars to the  
8 department to be deposited, as provided under RCW 61.24.172, into the  
9 foreclosure fairness account. The two hundred fifty dollar payment is  
10 required per property and not per notice of default. The beneficiary  
11 shall remit the total amount required in a lump sum each quarter.

12 (3) Reporting and payments under subsections (1) and (2) of this  
13 section are due within forty-five days of the end of each quarter.

14 (4) No later than thirty days after April 14, 2011, the  
15 beneficiaries required to report and remit to the department under this  
16 section shall determine the number of owner-occupied residential real  
17 properties for which notices of default were issued during the three  
18 months prior to April 14, 2011. The beneficiary shall remit to the  
19 department a one-time sum of two hundred fifty dollars multiplied by  
20 the number of properties. In addition, by July 31, 2011, the  
21 beneficiaries required to report and remit to the department under this  
22 section shall remit to the department another one-time sum of two  
23 hundred fifty dollars multiplied by the number of owner-occupied  
24 residential real properties for which notices of default were issued  
25 from April 14, 2011, through June 30, 2011. The department shall  
26 deposit the funds into the foreclosure fairness account as provided  
27 under RCW 61.24.172.

28 ((+4)) (5) This section does not apply to any beneficiary or loan  
29 servicer that is a federally insured depository institution, as defined  
30 in 12 U.S.C. Sec. 461(b)(1)(A), and that certifies under penalty of  
31 perjury that it has issued, or has directed a trustee or authorized  
32 agent to issue, fewer than two hundred fifty notices of default in the  
33 preceding year.

34 ((+5)) (6) This section does not apply to association  
35 beneficiaries subject to chapter 64.32, 64.34, or 64.38 RCW.

36 **Sec. 9.** RCW 61.24.030 and 2011 c 58 s 4 are each amended to read  
37 as follows:



1 It shall be requisite to a trustee's sale:

2 (1) That the deed of trust contains a power of sale;

3 (2) That the deed of trust contains a statement that the real  
4 property conveyed is not used principally for agricultural purposes;  
5 provided, if the statement is false on the date the deed of trust was  
6 granted or amended to include that statement, and false on the date of  
7 the trustee's sale, then the deed of trust must be foreclosed  
8 judicially. Real property is used for agricultural purposes if it is  
9 used in an operation that produces crops, livestock, or aquatic goods;

10 (3) That a default has occurred in the obligation secured or a  
11 covenant of the grantor, which by the terms of the deed of trust makes  
12 operative the power to sell;

13 (4) That no action commenced by the beneficiary of the deed of  
14 trust is now pending to seek satisfaction of an obligation secured by  
15 the deed of trust in any court by reason of the grantor's default on  
16 the obligation secured: PROVIDED, That (a) the seeking of the  
17 appointment of a receiver shall not constitute an action for purposes  
18 of this chapter; and (b) if a receiver is appointed, the grantor shall  
19 be entitled to any rents or profits derived from property subject to a  
20 homestead as defined in RCW 6.13.010. If the deed of trust was granted  
21 to secure a commercial loan, this subsection shall not apply to actions  
22 brought to enforce any other lien or security interest granted to  
23 secure the obligation secured by the deed of trust being foreclosed;

24 (5) That the deed of trust has been recorded in each county in  
25 which the land or some part thereof is situated;

26 (6) That prior to the date of the notice of trustee's sale and  
27 continuing thereafter through the date of the trustee's sale, the  
28 trustee must maintain a street address in this state where personal  
29 service of process may be made, and the trustee must maintain a  
30 physical presence and have telephone service at such address;

31 (7)(a) That, for residential real property, before the notice of  
32 trustee's sale is recorded, transmitted, or served, the trustee shall  
33 have proof that the beneficiary is the owner of any promissory note or  
34 other obligation secured by the deed of trust. A declaration by the  
35 beneficiary made under the penalty of perjury stating that the  
36 beneficiary is the actual holder of the promissory note or other  
37 obligation secured by the deed of trust shall be sufficient proof as  
38 required under this subsection.

1 (b) Unless the trustee has violated his or her duty under RCW  
2 61.24.010(4), the trustee is entitled to rely on the beneficiary's  
3 declaration as evidence of proof required under this subsection.

4 (c) This subsection (7) does not apply to association beneficiaries  
5 subject to chapter 64.32, 64.34, or 64.38 RCW;

6 (8) That at least thirty days before notice of sale shall be  
7 recorded, transmitted or served, written notice of default shall be  
8 transmitted by the beneficiary or trustee to the borrower and grantor  
9 at their last known addresses by both first-class and either registered  
10 or certified mail, return receipt requested, and the beneficiary or  
11 trustee shall cause to be posted in a conspicuous place on the  
12 premises, a copy of the notice, or personally served on the borrower  
13 and grantor. This notice shall contain the following information:

14 (a) A description of the property which is then subject to the deed  
15 of trust;

16 (b) A statement identifying each county in which the deed of trust  
17 is recorded and the document number given to the deed of trust upon  
18 recording by each county auditor or recording officer;

19 (c) A statement that the beneficiary has declared the borrower or  
20 grantor to be in default, and a concise statement of the default  
21 alleged;

22 (d) An itemized account of the amount or amounts in arrears if the  
23 default alleged is failure to make payments;

24 (e) An itemized account of all other specific charges, costs, or  
25 fees that the borrower, grantor, or any guarantor is or may be obliged  
26 to pay to reinstate the deed of trust before the recording of the  
27 notice of sale;

28 (f) A statement showing the total of (d) and (e) of this  
29 subsection, designated clearly and conspicuously as the amount  
30 necessary to reinstate the note and deed of trust before the recording  
31 of the notice of sale;

32 (g) A statement that failure to cure the alleged default within  
33 thirty days of the date of mailing of the notice, or if personally  
34 served, within thirty days of the date of personal service thereof, may  
35 lead to recordation, transmittal, and publication of a notice of sale,  
36 and that the property described in (a) of this subsection may be sold  
37 at public auction at a date no less than one hundred twenty days in the

1 future, or no less than one hundred fifty days in the future if the  
2 borrower received a letter under RCW 61.24.031;

3 (h) A statement that the effect of the recordation, transmittal,  
4 and publication of a notice of sale will be to (i) increase the costs  
5 and fees and (ii) publicize the default and advertise the grantor's  
6 property for sale;

7 (i) A statement that the effect of the sale of the grantor's  
8 property by the trustee will be to deprive the grantor of all their  
9 interest in the property described in (a) of this subsection;

10 (j) A statement that the borrower, grantor, and any guarantor has  
11 recourse to the courts pursuant to RCW 61.24.130 to contest the alleged  
12 default on any proper ground;

13 (k) In the event the property secured by the deed of trust is  
14 owner-occupied residential real property, a statement, prominently set  
15 out at the beginning of the notice, which shall state as follows:

16 (~~"You should take care to protect your interest in your home.~~  
17 ~~This notice of default (your failure to pay) is the first step in a~~  
18 ~~process that could result in you losing your home. You should~~  
19 ~~carefully review your options. For example:~~

20 ~~Can you pay and stop the foreclosure process?~~

21 ~~Do you dispute the failure to pay?~~

22 ~~Can you sell your property to preserve your equity?~~

23 ~~Are you able to refinance this loan or obligation with a new loan~~  
24 ~~or obligation from another lender with payments, terms, and fees that~~  
25 ~~are more affordable?~~

26 ~~Do you qualify for any government or private homeowner assistance~~  
27 ~~programs?~~

28 ~~Do you know if filing for bankruptcy is an option? What are the~~  
29 ~~pros and cons of doing so?~~

30 ~~Do not ignore this notice; because if you do nothing, you could~~  
31 ~~lose your home at a foreclosure sale. (No foreclosure sale can be held~~  
32 ~~any sooner than ninety days after a notice of sale is issued and a~~  
33 ~~notice of sale cannot be issued until thirty days after this notice.)~~  
34 ~~Also, if you do nothing to pay what you owe, be careful of people who~~  
35 ~~claim they can help you. There are many individuals and businesses~~  
36 ~~that watch for the notices of sale in order to unfairly profit as a~~  
37 ~~result of borrowers' distress.~~

1 You may feel you need help understanding what to do. There are a  
2 number of professional resources available, including home loan  
3 counselors and attorneys, who may assist you. Many legal services are  
4 lower cost or even free, depending on your ability to pay. If you  
5 desire legal help in understanding your options or handling this  
6 default, you may obtain a referral (at no charge) by contacting the  
7 county bar association in the county where your home is located. These  
8 legal referral services also provide information about lower cost or  
9 free legal services for those who qualify. You may contact the  
10 Department of Financial Institutions or the statewide civil legal aid  
11 hotline for possible assistance or referrals"))

12 **"THIS NOTICE IS ONE STEP IN A PROCESS THAT COULD RESULT IN YOUR**  
13 **LOSING YOUR HOME.**

14 You may be eligible for mediation in front of a neutral third party to  
15 help save your home.

16  
17 **CONTACT A HOUSING COUNSELOR OR AN ATTORNEY LICENSED IN WASHINGTON NOW**  
18 to assess your situation and refer you to mediation if you might  
19 benefit. Mediation **MUST** be requested between the time you receive the  
20 Notice of Default and no later than twenty days after the Notice of  
21 Trustee Sale is recorded.

22  
23 **DO NOT DELAY.** If you do nothing, a notice of sale may be issued as  
24 soon as 30 days from the date of this notice of default. The notice of  
25 sale will provide a minimum of 120 days' notice of the date of the  
26 actual foreclosure sale.

27  
28 **BE CAREFUL** of people who claim they can help you. There are many  
29 individuals and businesses that prey upon borrowers in distress.

30  
31 **REFER TO THE CONTACTS BELOW** for sources of assistance.

32 **SEEKING ASSISTANCE**

33 Housing counselors and legal assistance may be available at little or  
34 no cost to you. If you would like assistance in determining your  
35 rights and opportunities to keep your house, you may contact the  
36 following:

37 The statewide foreclosure hotline for assistance and referral to  
38 housing counselors recommended by the Housing Finance Commission

39 Telephone: . . . . . Web site: . . . . .

40 The United States Department of Housing and Urban Development

1 Telephone: . . . . . Web site: . . . . .

2 The statewide civil legal aid hotline for assistance and referrals to  
3 other housing counselors and attorneys

4 Telephone: . . . . . Web site: . . . . ."

5 The beneficiary or trustee shall obtain the toll-free numbers and  
6 web site information from the department for inclusion in the notice;  
7 and

8 (1) In the event the property secured by the deed of trust is  
9 residential real property, the name and address of the owner of any  
10 promissory notes or other obligations secured by the deed of trust and  
11 the name, address, and telephone number of a party acting as a servicer  
12 of the obligations secured by the deed of trust; and

13 (9) That, for owner-occupied residential real property, before the  
14 notice of the trustee's sale is recorded, transmitted, or served, the  
15 beneficiary has complied with RCW 61.24.031 and, if applicable, RCW  
16 61.24.163.

17 **Sec. 10.** RCW 61.24.040 and 2009 c 292 s 9 are each amended to read  
18 as follows:

19 A deed of trust foreclosed under this chapter shall be foreclosed  
20 as follows:

21 (1) At least ninety days before the sale, or if a letter under RCW  
22 61.24.031 is required, at least one hundred twenty days before the  
23 sale, the trustee shall:

24 (a) Record a notice in the form described in (f) of this subsection  
25 in the office of the auditor in each county in which the deed of trust  
26 is recorded;

27 (b) To the extent the trustee elects to foreclose its lien or  
28 interest, or the beneficiary elects to preserve its right to seek a  
29 deficiency judgment against a borrower or grantor under RCW  
30 61.24.100(3)(a), and if their addresses are stated in a recorded  
31 instrument evidencing their interest, lien, or claim of lien, or an  
32 amendment thereto, or are otherwise known to the trustee, cause a copy  
33 of the notice of sale described in (f) of this subsection to be  
34 transmitted by both first-class and either certified or registered  
35 mail, return receipt requested, to the following persons or their legal  
36 representatives, if any, at such address:

37 (i) The borrower and grantor;

1 (ii) The beneficiary of any deed of trust or mortgagee of any  
2 mortgage, or any person who has a lien or claim of lien against the  
3 property, that was recorded subsequent to the recordation of the deed  
4 of trust being foreclosed and before the recordation of the notice of  
5 sale;

6 (iii) The vendee in any real estate contract, the lessee in any  
7 lease, or the holder of any conveyances of any interest or estate in  
8 any portion or all of the property described in such notice, if that  
9 contract, lease, or conveyance of such interest or estate, or a  
10 memorandum or other notice thereof, was recorded after the recordation  
11 of the deed of trust being foreclosed and before the recordation of the  
12 notice of sale;

13 (iv) The last holder of record of any other lien against or  
14 interest in the property that is subject to a subordination to the deed  
15 of trust being foreclosed that was recorded before the recordation of  
16 the notice of sale;

17 (v) The last holder of record of the lien of any judgment  
18 subordinate to the deed of trust being foreclosed; and

19 (vi) The occupants of property consisting solely of a single-family  
20 residence, or a condominium, cooperative, or other dwelling unit in a  
21 multiplex or other building containing fewer than five residential  
22 units, whether or not the occupant's rental agreement is recorded,  
23 which notice may be a single notice addressed to "occupants" for each  
24 unit known to the trustee or beneficiary;

25 (c) Cause a copy of the notice of sale described in (f) of this  
26 subsection to be transmitted by both first-class and either certified  
27 or registered mail, return receipt requested, to the plaintiff or the  
28 plaintiff's attorney of record, in any court action to foreclose a lien  
29 or other encumbrance on all or any part of the property, provided a  
30 court action is pending and a lis pendens in connection therewith is  
31 recorded in the office of the auditor of any county in which all or  
32 part of the property is located on the date the notice is recorded;

33 (d) Cause a copy of the notice of sale described in (f) of this  
34 subsection to be transmitted by both first-class and either certified  
35 or registered mail, return receipt requested, to any person who has  
36 recorded a request for notice in accordance with RCW 61.24.045, at the  
37 address specified in such person's most recently recorded request for  
38 notice;

(e) Cause a copy of the notice of sale described in (f) of this subsection to be posted in a conspicuous place on the property, or in lieu of posting, cause a copy of said notice to be served upon any occupant of the property;

(f) The notice shall be in substantially the following form:

NOTICE OF TRUSTEE'S SALE

I.

NOTICE IS HEREBY GIVEN that the undersigned Trustee will on the . . . . day of . . . . ., . . . ., at the hour of . . . . o'clock . . . . M. at . . . . . [street address and location if inside a building] in the City of . . . . ., State of Washington, sell at public auction to the highest and best bidder, payable at the time of sale, the following described real property, situated in the County(ies) of . . . . ., State of Washington, to-wit:

[If any personal property is to be included in the trustee's sale, include a description that reasonably identifies such personal property]

which is subject to that certain Deed of Trust dated . . . . ., . . . ., recorded . . . . ., . . . ., under Auditor's File No. . . . ., records of . . . . . County, Washington, from . . . . ., as Grantor, to . . . . ., as Trustee, to secure an obligation in favor of . . . . ., as Beneficiary, the beneficial interest in which was assigned by . . . . ., under an Assignment recorded under Auditor's File No. . . . . [Include recording information for all counties if the Deed of Trust is recorded in more than one county.]

II.

No action commenced by the Beneficiary of the Deed of Trust is now pending to seek satisfaction of the obligation in any Court by reason of the Borrower's or Grantor's default on the obligation secured by the Deed of Trust.

[If there is another action pending to foreclose other security for all or part of the same debt, qualify the statement and identify the action.]

1 III.

2 The default(s) for which this foreclosure is made is/are as follows:

3 [If default is for other than payment of money, set forth the  
4 particulars]

5 Failure to pay when due the following amounts which are now in arrears:

6 IV.

7 The sum owing on the obligation secured by the Deed of Trust is:  
8 Principal \$ . . . . ., together with interest as provided in the note  
9 or other instrument secured from the . . . . day of . . . . ., . . . .,  
10 and such other costs and fees as are due under the note or other  
11 instrument secured, and as are provided by statute.

12 V.

13 The above-described real property will be sold to satisfy the expense  
14 of sale and the obligation secured by the Deed of Trust as provided by  
15 statute. The sale will be made without warranty, express or implied,  
16 regarding title, possession, or encumbrances on the . . . . day of  
17 . . . . ., . . . . The default(s) referred to in paragraph III must be  
18 cured by the . . . . day of . . . . ., . . . . (11 days before the sale  
19 date), to cause a discontinuance of the sale. The sale will be  
20 discontinued and terminated if at any time on or before the . . . . day  
21 of . . . . ., . . . . (11 days before the sale date), the default(s)  
22 as set forth in paragraph III is/are cured and the Trustee's fees and  
23 costs are paid. The sale may be terminated any time after the . . . .  
24 day of . . . . ., . . . . (11 days before the sale date), and before  
25 the sale by the Borrower, Grantor, any Guarantor, or the holder of any  
26 recorded junior lien or encumbrance paying the entire principal and  
27 interest secured by the Deed of Trust, plus costs, fees, and advances,  
28 if any, made pursuant to the terms of the obligation and/or Deed of  
29 Trust, and curing all other defaults.

30 VI.

31 A written notice of default was transmitted by the Beneficiary or  
32 Trustee to the Borrower and Grantor at the following addresses:



by both first-class and certified mail on the . . . . day of  
. . . . ., . . ., proof of which is in the possession of the Trustee;  
and the Borrower and Grantor were personally served on the . . . . day  
of . . . . ., . . ., with said written notice of default or the  
written notice of default was posted in a conspicuous place on the real  
property described in paragraph I above, and the Trustee has possession  
of proof of such service or posting.

VII.

The Trustee whose name and address are set forth below will provide in  
writing to anyone requesting it, a statement of all costs and fees due  
at any time prior to the sale.

VIII.

The effect of the sale will be to deprive the Grantor and all those who  
hold by, through or under the Grantor of all their interest in the  
above-described property.

IX.

Anyone having any objection to the sale on any grounds whatsoever will  
be afforded an opportunity to be heard as to those objections if they  
bring a lawsuit to restrain the sale pursuant to RCW 61.24.130.  
Failure to bring such a lawsuit may result in a waiver of any proper  
grounds for invalidating the Trustee's sale.

[Add Part X to this notice if applicable under RCW 61.24.040(9)]

.....

....., Trustee

..... }  
..... } Address  
..... }  
..... } Phone

[Acknowledgment]

1       (g) If the borrower received a letter under RCW 61.24.031, the  
2 notice specified in subsection (1)(f) of this section shall also  
3 include the following additional language:

4       **"THIS NOTICE IS THE FINAL STEP BEFORE THE FORECLOSURE SALE OF YOUR**  
5 **HOME.**

6 You have only 20 DAYS from the recording date on this notice to pursue  
7 mediation.

8 **DO NOT DELAY. CONTACT A HOUSING COUNSELOR OR AN ATTORNEY LICENSED IN**  
9 **WASHINGTON NOW** to assess your situation and refer you to mediation if  
10 you are eligible and it may help you save your home. See below for  
11 safe sources of help.

12                   **SEEKING ASSISTANCE**

13 Housing counselors and legal assistance may be available at little or  
14 no cost to you. If you would like assistance in determining your  
15 rights and opportunities to keep your house, you may contact the  
16 following:

17 The statewide foreclosure hotline for assistance and referral to  
18 housing counselors recommended by the Housing Finance Commission

19 Telephone: . . . . . Web site: . . . . .

20 The United States Department of Housing and Urban Development

21 Telephone: . . . . . Web site: . . . . .

22 The statewide civil legal aid hotline for assistance and referrals to  
23 other housing counselors and attorneys

24 Telephone: . . . . . Web site: . . . . ."

25       The beneficiary or trustee shall obtain the toll-free numbers and  
26 web site information from the department for inclusion in the notice.

27       (2) In addition to providing the borrower and grantor the notice of  
28 sale described in subsection (1)(f) of this section, the trustee shall  
29 include with the copy of the notice which is mailed to the grantor, a  
30 statement to the grantor in substantially the following form:

31                   NOTICE OF FORECLOSURE

32                   Pursuant to the Revised Code of Washington,

The attached Notice of Trustee's Sale is a consequence of default(s) in the obligation to . . . . ., the Beneficiary of your Deed of Trust and owner of the obligation secured thereby. Unless the default(s) is/are cured, your property will be sold at auction on the . . . . day of . . . . ., . . . .

To cure the default(s), you must bring the payments current, cure any other defaults, and pay accrued late charges and other costs, advances, and attorneys' fees as set forth below by the . . . . day of . . . . ., . . . . [11 days before the sale date]. To date, these arrears and costs are as follows:

	Currently due to reinstate on . . . . . . . . . .	Estimated amount that will be due to reinstate on . . . . . . . . . . (11 days before the date set for sale)
Delinquent payments from . . . . ., . . . , in the amount of \$ . . . /mo.:	\$ . . .	\$ . . .
Late charges in the total amount of:	\$ . . .	\$ . . .
		Estimated Amounts
Attorneys' fees:	\$ . . .	\$ . . .
Trustee's fee:	\$ . . .	\$ . . .
Trustee's expenses:		

1	(Itemization)		
2	Title report	\$....	\$....
3	Recording fees	\$....	\$....
4	Service/Posting		
5	of Notices	\$....	\$....
6	Postage/Copying		
7	expense	\$....	\$....
8	Publication	\$....	\$....
9	Telephone		\$....
10	charges	\$....	
11	Inspection fees	\$....	\$....
12	.....	\$....	\$....
13	.....	\$....	\$....
14	TOTALS	\$....	\$....

15 To pay off the entire obligation secured by your Deed of Trust as  
16 of the . . . . . day of . . . . . you must pay a total of \$. . . . .  
17 in principal, \$. . . . . in interest, plus other costs and advances  
18 estimated to date in the amount of \$. . . . . From and after the  
19 date of this notice you must submit a written request to the Trustee to  
20 obtain the total amount to pay off the entire obligation secured by  
21 your Deed of Trust as of the payoff date.

22 As to the defaults which do not involve payment of money to the  
23 Beneficiary of your Deed of Trust, you must cure each such default.  
24 Listed below are the defaults which do not involve payment of money to  
25 the Beneficiary of your Deed of Trust. Opposite each such listed  
26 default is a brief description of the action necessary to cure the  
27 default and a description of the documentation necessary to show that  
28 the default has been cured.

29	Default	Description of Action Required to Cure and
30		Documentation Necessary to Show Cure
31	.....	.....
32		.....
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.....

You may reinstate your Deed of Trust and the obligation secured thereby at any time up to and including the . . . . day of . . . . ., . . . [11 days before the sale date], by paying the amount set forth or estimated above and by curing any other defaults described above. Of course, as time passes other payments may become due, and any further payments coming due and any additional late charges must be added to your reinstating payment. Any new defaults not involving payment of money that occur after the date of this notice must also be cured in order to effect reinstatement. In addition, because some of the charges can only be estimated at this time, and because the amount necessary to reinstate or to pay off the entire indebtedness may include presently unknown expenditures required to preserve the property or to comply with state or local law, it will be necessary for you to contact the Trustee before the time you tender reinstatement or the payoff amount so that you may be advised of the exact amount you will be required to pay. Tender of payment or performance must be made to: . . . . ., whose address is . . . . ., telephone ( ) . . . . . AFTER THE . . . . DAY OF . . . . ., . . . ., YOU MAY NOT REINSTATE YOUR DEED OF TRUST BY PAYING THE BACK PAYMENTS AND COSTS AND FEES AND CURING THE OTHER DEFAULTS AS OUTLINED ABOVE. The Trustee will respond to any written request for current payoff or reinstatement amounts within ten days of receipt of your written request. In such a case, you will only be able to stop the sale by paying, before the sale, the total principal balance (\$ . . . . .) plus accrued interest, costs and advances, if any, made pursuant to the terms of the documents and by curing the other defaults as outlined above.

You may contest this default by initiating court action in the Superior Court of the county in which the sale is to be held. In such action, you may raise any legitimate defenses you have to this default. A copy of your Deed of Trust and documents evidencing the obligation secured thereby are enclosed. You may wish to consult a lawyer. Legal action on your part may prevent or restrain the sale, but only if you persuade the court of the merits of your defense. You may contact the Department of Financial Institutions or the statewide civil legal aid hotline for possible assistance or referrals.

1 The court may grant a restraining order or injunction to restrain  
2 a trustee's sale pursuant to RCW 61.24.130 upon five days notice to the  
3 trustee of the time when, place where, and the judge before whom the  
4 application for the restraining order or injunction is to be made.  
5 This notice shall include copies of all pleadings and related documents  
6 to be given to the judge. Notice and other process may be served on  
7 the trustee at:

8 NAME: .....

9 ADDRESS: .....

10 .....

11 TELEPHONE NUMBER: .....

12 If you do not reinstate the secured obligation and your Deed of  
13 Trust in the manner set forth above, or if you do not succeed in  
14 restraining the sale by court action, your property will be sold. The  
15 effect of such sale will be to deprive you and all those who hold by,  
16 through or under you of all interest in the property;

17 (3) In addition, the trustee shall cause a copy of the notice of  
18 sale described in subsection (1)(f) of this section (excluding the  
19 acknowledgment) to be published in a legal newspaper in each county in  
20 which the property or any part thereof is situated, once on or between  
21 the thirty-fifth and twenty-eighth day before the date of sale, and  
22 once on or between the fourteenth and seventh day before the date of  
23 sale;

24 (4) On the date and at the time designated in the notice of sale,  
25 the trustee or its authorized agent shall sell the property at public  
26 auction to the highest bidder. The trustee may sell the property in  
27 gross or in parcels as the trustee shall deem most advantageous;

28 (5) The place of sale shall be at any designated public place  
29 within the county where the property is located and if the property is  
30 in more than one county, the sale may be in any of the counties where  
31 the property is located. The sale shall be on Friday, or if Friday is  
32 a legal holiday on the following Monday, and during the hours set by  
33 statute for the conduct of sales of real estate at execution;

34 (6) The trustee has no obligation to, but may, for any cause the  
35 trustee deems advantageous, continue the sale for a period or periods  
36 not exceeding a total of one hundred twenty days by (a) a public

1 proclamation at the time and place fixed for sale in the notice of sale  
2 and if the continuance is beyond the date of sale, by giving notice of  
3 the new time and place of the sale by both first class and either  
4 certified or registered mail, return receipt requested, to the persons  
5 specified in subsection (1)(b)(i) and (ii) of this section to be  
6 deposited in the mail (i) not less than four days before the new date  
7 fixed for the sale if the sale is continued for up to seven days; or  
8 (ii) not more than three days after the date of the continuance by oral  
9 proclamation if the sale is continued for more than seven days, or,  
10 alternatively, (b) by giving notice of the time and place of the  
11 postponed sale in the manner and to the persons specified in subsection  
12 (1)(b), (c), (d), and (e) of this section and publishing a copy of such  
13 notice once in the newspaper(s) described in subsection (3) of this  
14 section, more than seven days before the date fixed for sale in the  
15 notice of sale. No other notice of the postponed sale need be given;

16 (7) The purchaser shall forthwith pay the price bid and on payment  
17 the trustee shall execute to the purchaser its deed; the deed shall  
18 recite the facts showing that the sale was conducted in compliance with  
19 all of the requirements of this chapter and of the deed of trust, which  
20 recital shall be prima facie evidence of such compliance and conclusive  
21 evidence thereof in favor of bona fide purchasers and encumbrancers for  
22 value, except that these recitals shall not affect the lien or interest  
23 of any person entitled to notice under subsection (1) of this section,  
24 if the trustee fails to give the required notice to such person. In  
25 such case, the lien or interest of such omitted person shall not be  
26 affected by the sale and such omitted person shall be treated as if  
27 such person was the holder of the same lien or interest and was omitted  
28 as a party defendant in a judicial foreclosure proceeding;

29 (8) The sale as authorized under this chapter shall not take place  
30 less than one hundred ninety days from the date of default in any of  
31 the obligations secured;

32 (9) If the trustee elects to foreclose the interest of any occupant  
33 or tenant of property comprised solely of a single-family residence, or  
34 a condominium, cooperative, or other dwelling unit in a multiplex or  
35 other building containing fewer than five residential units, the  
36 following notice shall be included as Part X of the Notice of Trustee's  
37 Sale:

38 X. NOTICE TO OCCUPANTS OR TENANTS

1 The purchaser at the trustee's sale is entitled to possession of the  
2 property on the 20th day following the sale, as against the grantor  
3 under the deed of trust (the owner) and anyone having an interest  
4 junior to the deed of trust, including occupants who are not tenants.  
5 After the 20th day following the sale the purchaser has the right to  
6 evict occupants who are not tenants by summary proceedings under  
7 chapter 59.12 RCW. For tenant-occupied property, the purchaser shall  
8 provide a tenant with written notice in accordance with RCW 61.24.060;

9 (10) Only one copy of all notices required by this chapter need be  
10 given to a person who is both the borrower and the grantor. All  
11 notices required by this chapter that are given to a general  
12 partnership are deemed given to each of its general partners, unless  
13 otherwise agreed by the parties.

14 NEW SECTION. **Sec. 11.** A new section is added to chapter 61.24 RCW  
15 to read as follows:

16 (1) A borrower who has been referred to mediation before the  
17 effective date of this section may continue through the mediation  
18 process and does not lose his or her right to mediation.

19 (2) A borrower who has not been referred to mediation as of the  
20 effective date of this section may only be referred to mediation after  
21 a notice of default has been issued but no later than twenty days from  
22 the date a notice of sale is recorded.

23 (3) A borrower who has not been referred to mediation as of the  
24 effective date of this section and who has had a notice of sale  
25 recorded may only be referred to mediation if the referral is made  
26 before twenty days have passed from the date the notice of sale was  
27 recorded.

28 **Sec. 12.** RCW 61.24.172 and 2011 c 58 s 11 are each amended to read  
29 as follows:

30 The foreclosure fairness account is created in the custody of the  
31 state treasurer. All receipts received under RCW 61.24.174 must be  
32 deposited into the account. Only the director of the department of  
33 commerce or the director's designee may authorize expenditures from the  
34 account. Funding to agencies and organizations under this section must  
35 be provided by the department through an interagency agreement or other  
36 applicable contract instrument. The account is subject to allotment



1 procedures under chapter 43.88 RCW, but an appropriation is not  
2 required for expenditures. Expenditures from the account must be used  
3 as follows: (1) No less than (~~(eighty)~~) seventy-six percent must be  
4 used for the purposes of providing housing (~~(counselors—for)~~)  
5 counseling activities to benefit borrowers, except that this amount may  
6 be less than (~~(eighty)~~) seventy-six percent only if necessary to meet  
7 the funding level specified for the office of the attorney general  
8 under subsection (2) of this section and the department under  
9 subsection (4) of this section; (2) up to six percent, or six hundred  
10 fifty-five thousand dollars per biennium, whichever amount is greater,  
11 to the office of the attorney general to be used by the consumer  
12 protection division to enforce this chapter; (3) up to two percent to  
13 the office of civil legal aid to be used for the purpose of contracting  
14 with qualified legal aid programs for legal representation of  
15 homeowners in matters relating to foreclosure. Funds provided under  
16 this subsection (3) must be used to supplement, not supplant, other  
17 federal, state, and local funds; (4) up to (~~(nine)~~) thirteen percent,  
18 or (~~(four hundred fifty-one)~~) five hundred ninety thousand dollars per  
19 biennium, whichever amount is greater, to the department to be used for  
20 implementation and operation of the foreclosure fairness act; and (5)  
21 up to three percent to the department of financial institutions to  
22 conduct homeowner prepurchase and postpurchase outreach and education  
23 programs as defined in RCW 43.320.150.

24 The department shall enter into interagency agreements to contract  
25 with the Washington state housing finance commission and other  
26 appropriate entities to implement the foreclosure fairness act.

27 **Sec. 13.** RCW 61.24.010 and 2009 c 292 s 7 are each amended to read  
28 as follows:

29 (1) The trustee of a deed of trust under this chapter shall be:

30 (a) Any domestic corporation or domestic limited liability  
31 corporation incorporated under Title 23B, 25, 30, 31, 32, or 33 RCW of  
32 which at least one officer is a Washington resident; or

33 (b) Any title insurance company authorized to insure title to real  
34 property under the laws of this state, or any title insurance agent  
35 licensed under chapter 48.17 RCW; or

36 (c) Any attorney who is an active member of the Washington state  
37 bar association at the time the attorney is named trustee; or

1 (d) Any professional corporation incorporated under chapter 18.100  
2 RCW, any professional limited liability company formed under chapter  
3 25.15 RCW, any general partnership, including limited liability  
4 partnerships, formed under chapter 25.04 RCW, all of whose  
5 shareholders, members, or partners, respectively, are either licensed  
6 attorneys or entities, provided all of the owners of those entities are  
7 licensed attorneys, or any domestic corporation wholly owned by any of  
8 the entities under this subsection (1)(d); or

9 (e) Any agency or instrumentality of the United States government;  
10 or

11 (f) Any national bank, savings bank, or savings and loan  
12 association chartered under the laws of the United States.

13 (2) The trustee may resign at its own election or be replaced by  
14 the beneficiary. The trustee shall give prompt written notice of its  
15 resignation to the beneficiary. The resignation of the trustee shall  
16 become effective upon the recording of the notice of resignation in  
17 each county in which the deed of trust is recorded. If a trustee is  
18 not appointed in the deed of trust, or upon the resignation,  
19 incapacity, disability, absence, or death of the trustee, or the  
20 election of the beneficiary to replace the trustee, the beneficiary  
21 shall appoint a trustee or a successor trustee. Only upon recording  
22 the appointment of a successor trustee in each county in which the deed  
23 of trust is recorded, the successor trustee shall be vested with all  
24 powers of an original trustee.

25 (3) The trustee or successor trustee shall have no fiduciary duty  
26 or fiduciary obligation to the grantor or other persons having an  
27 interest in the property subject to the deed of trust.

28 (4) The trustee or successor trustee has a duty of good faith to  
29 the borrower, beneficiary, and grantor.

30 **Sec. 14.** RCW 61.24.050 and 1998 c 295 s 7 are each amended to read  
31 as follows:

32 ((When delivered)) (1) Upon physical delivery of the trustee's deed  
33 to the purchaser, or a different grantee as designated by the purchaser  
34 following the trustee's sale, the trustee's deed shall convey all of  
35 the right, title, and interest in the real and personal property sold  
36 at the trustee's sale which the grantor had or had the power to convey  
37 at the time of the execution of the deed of trust, and such as the

1 grantor may have thereafter acquired. Except as provided in subsection  
2 (2) of this section, if the trustee accepts a bid, then the trustee's  
3 sale is final as of the date and time of such acceptance if the  
4 trustee's deed is recorded within fifteen days thereafter. After a  
5 trustee's sale, no person shall have any right, by statute or  
6 otherwise, to redeem the property sold at the trustee's sale.

7 (2)(a) Up to the eleventh day following the trustee's sale, the  
8 trustee, beneficiary, or authorized agent for the beneficiary may  
9 declare the trustee's sale and trustee's deed void for the following  
10 reasons:

11 (i) The trustee, beneficiary, or authorized agent for the  
12 beneficiary assert that there was an error with the trustee foreclosure  
13 sale process including, but not limited to, an erroneous opening bid  
14 amount made by or on behalf of the foreclosing beneficiary at the  
15 trustee's sale;

16 (ii) The borrower and beneficiary, or authorized agent for the  
17 beneficiary, had agreed prior to the trustee's sale to a loan  
18 modification agreement, forbearance plan, shared appreciation mortgage,  
19 or other loss mitigation agreement to postpone or discontinue the  
20 trustee's sale; or

21 (iii) The beneficiary or authorized agent for the beneficiary had  
22 accepted funds that fully reinstated or satisfied the loan even if the  
23 beneficiary or authorized agent for the beneficiary had no legal duty  
24 to do so.

25 (b) This subsection does not impose a duty upon the trustee any  
26 different than the obligations set forth under RCW 61.24.010 (3) and  
27 (4).

28 (3) The trustee must refund the bid amount to the purchaser no  
29 later than the third day following the postmarked mailing of the  
30 rescission notice described under subsection (4) of this section.

31 (4) No later than fifteen days following the voided trustee's sale  
32 date, the trustee shall send a notice in substantially the following  
33 form by first-class mail and certified mail, return receipt requested,  
34 to all parties entitled to notice under RCW 61.24.040(1) (b) through  
35 (e):

36  
37 NOTICE OF RESCISSION OF TRUSTEE'S SALE  
38  
39

1 NOTICE IS HEREBY GIVEN that the trustee's sale that occurred on  
2 (trustee's sale date) is rescinded and declared void because (insert  
3 the applicable reason(s) permitted under RCW 61.24.050(2)(a)).

4 The trustee's sale occurred pursuant to that certain Notice of  
5 Trustee's Sale dated . . . . ., recorded . . . . ., under  
6 Auditor's File No. . . . ., records of . . . . . County, Washington, and  
7 that certain Deed of Trust dated . . . . ., recorded . . . . .  
8 . . . under Auditor's File No. . . . ., records of . . . . . County,  
9 Washington, from . . . . . as Grantor, to . . . . . as . . . . . as  
10 original Beneficiary, concerning the following described property,  
11 situated in the County(ies) of . . . . ., State of Washington, to wit:

12  
13 (Legal description)

14  
15  
16 Commonly known as (common property address)

17  
18 (5) If the reason for the rescission stems from subsection (2)(a)  
19 (i) or (ii) of this section, the trustee may set a new sale date not  
20 less than forty-five days following the mailing of the notice of  
21 rescission of trustee's sale. The trustee shall:

22 (a) Comply with the requirements of RCW 61.24.040(1) (a) through  
23 (f) at least thirty days before the new sale date; and

24 (b) Cause a copy of the notice of trustee's sale as provided in RCW  
25 61.24.040(1)(f) to be published in a legal newspaper in each county in  
26 which the property or any part of the property is situated, once  
27 between the thirty-fifth and twenty-eighth day before the sale and once  
28 between the fourteenth and seventh day before the sale.

29 NEW SECTION. Sec. 15. Section 12 of this act is necessary for the  
30 immediate preservation of the public peace, health, or safety, or  
31 support of the state government and its existing public institutions,  
32 and takes effect immediately.

Passed by the House March 6, 2012.

Passed by the Senate March 5, 2012.

Approved by the Governor March 29, 2012.

Filed in Office of Secretary of State March 29, 2012.